

1 Enid Futterman
2 661 State Road 23
3 Craryville NY 12521

U.S. DISTRICT COURT
N.D. OF N.Y.
FILED

4 UNITED STATES DISTRICT COURT

SEP 15 2010

5 NORTHERN DISCTRIC OF NEW YORK

LAWRENCE K. BAERMAN, CLERK
ALBANY

6

Enid Futterman

Case # 10-CV-1001

Plaintiff,

vs.

Principal Bank

Defendant

PETITION FOR NO ANSWER

DEFAULT

Date: 9.15.10

7

8 **PARTIES**

9 PLAINTIFF'S REQUEST FOR ENTRY OF DEFAULT

10 Plaintiff asks the court clerk to enter a default against defendant, as authorized by Federal
11 Rule of Civil Procedure 55.

12 A. Introduction

13 1. Plaintiff is: Enid Futterman , 661 State Road 23, Craryville NY 12521, and defendant
14 is: Principal Bank ,

15 2. On August 18, 2010, plaintiff sued defendant for breach of fiduciary duty, fraud, fraud
16 by nondisclosure, and violations of various consumer protection laws.

17 3. On August 18, 2010, plaintiff filed with the court an ORIGINAL COMPLAINT. On
18 August 24, 2010 defendant was served with a summons and a copy of plaintiff's complaint by
19 and through Iowa Process Service. A copy of the return of service is attached as Exhibit A.
20 Defendant did not file a responsive pleading or otherwise defend the suit.

21 4. Plaintiff is entitled to entry of default.

1

B. Argument

2 5. The court clerk may enter a default against a party who has not filed a responsive
3 pleading or otherwise defended the suit. Fed. R. Civ. P. 55(a); *see United States v. \$23,000 in*
4 *U.S. Currency*, 356 F.3d 157, 163 (1st Cir. 2004); *N.Y. Life Ins. Co. v. Brown*, 84 F.3d 137, 141
5 (5th Cir. 1996); *United States v. 51 Pieces of Real Prop. Roswell, N.M.*, 17 F.3d 1306, 1314
6 (10th Cir. 1994).

7 6. The clerk should enter a default against defendant because defendant did not file an
8 answer within 20 days after August 24, 2010, the date of service. Fed. R. Civ. P. 12(a)(1)(A)(i).

9 7. Plaintiff meets the procedural requirements for obtaining an entry of default from the
10 clerk as demonstrated by Linda Dugan's sworn affidavit, attached as Exhibit A. Said affidavit
11 establishes by sworn testimony of Plaintiff that Defendant failed to answer or otherwise defend
12 the instant action within the 20 day time period allowed by law.

13 8. Defendant is not a minor or an incompetent person. *See* Fed. R. Civ. P. 55(b)(1).

14 9. Defendant is not in military service. *See* 50 U.S.C. app. §521(b)(2). An affidavit of
15 defendant's military status is attached as Exhibit A.

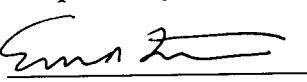
16 10. Because defendant did not file a responsive pleading or otherwise defend the suit,
17 defendant is not entitled to notice of entry of default. *Haw. Carpenters' Trust Funds v. Stone*,
18 794 F.2d 508, 512 (9th Cir. 1986); *see* Fed. R. Civ. P. 55(a).

19

C. Conclusion

20 11. Plaintiff filed a suit against defendant in the court on the 18th day of August, 2010.
21 Defendant failed to timely answer or otherwise defend said action and, thereby, Plaintiff is
22 entitled to judgment against defendant in all things requested by Plaintiff in the suit. For these
23 reasons, plaintiff asks the clerk to enter a default in favor of plaintiff.

24 **Respectfully Submitted,**

25 
26 Enid Futterman
27

1 **VERIFICATION**
2
3

4 I, Enid Futterman , do swear and affirm that all statements made herein are true and accurate, in
5 all respects, to the best of my knowledge.

6 Enid Futterman
7 661 State Road 23
8 Craryville NY 12521

9 Enid Futterman

10 SWORN TO AND SUBSCRIBED BEFORE ME, Patricia Cutler, by Enid Futterman on
11 the 14 day of September, 2010, which witnesses my hand and seal of office.

12 Patricia Cutler
13
14 **NOTARY PUBLIC IN AND FOR**
15 **THE STATE OF NEW YORK**

PATRICIA CUTLER
Notary Public, State of New York
Qualified in Columbia County
No. 04CU6117635
My Commission Expires Nov 1, 20 12

Exhibit A

AO 440 (Rev. 04/08) Civil Summons (Page 2)

Proof of Service

I declare under penalty of perjury that I served the summons and complaint in this case on 8/24/2010 at 12:45, pm by:

(1) personally delivering a copy of each to the individual at this place, _____

; or

(2) leaving a copy of each at the individual's dwelling or usual place of abode with _____
who resides there and is of suitable age and discretion; or

(3) delivering a copy of each to an agent authorized by appointment or by law to receive it whose name is
Ann Smalley, Sr. Compliance Analyst, Principal Bank; or

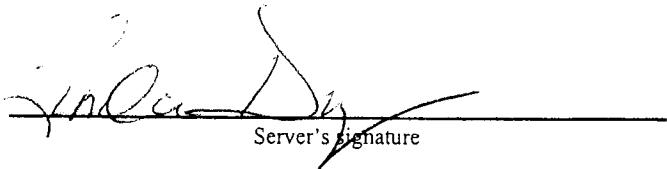
(4) returning the summons unexecuted to the court clerk on _____; or

(5) other (specify) _____

_____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 1/11.

Date: 8/25/2010



Linda Dugan
Server's signature

Linda Dugan, Process Server

Printed name and title

Ind. Contractor for Iowa Process Service
541 31st Street
Des Moines, IA 50312
(877)816-4696

Server's address

Iowa Process Service

541 31st Street, Des Moines, IA 50312
Phone: 877-816-4696 Fax: 877-818-9844
Email: info@iowaserveprocess.com

Field Sheet & Receipt

Assigned To: Linda Dugan

Serve To: Principal Bank

Address: 6200 Park Avenue, Des Moines, IA 50321-1270

JOB ID: 10-003581

Priority: Routine

Spec. Instrns: Please serve any authorized person on behalf of Principal Bank. Make sure to get name and title and physical description of person served since this is a NY case.

Case Number: 1:10-CV-1001

Document(s): Summons in a Civil Action; Original Petition

SERVICE ATTEMPTS

Date / Time	Remarks
1.) _____	
2.) _____	
3.) _____	
4.) _____	

Service Type: Personal Substitute Corporate Non-Service Posted

Actual Service Date: 8-24 2010 @ 12:45 AM PM Additional Address: 1 2 3

Person Served: Ann Smalley Relationship: Bank Analyst

Race: W Sex: M F Age: 34 Ht: 5 Wt: 6" Hair: BL Glasses: Y N

COMMENTS: SHORT HAIR / BOB HAIR CUT

I acknowledge receipt of the documents listed above:

Ann Smalley
Ann Smalley
Signature Of Recipient

Sr. Compliance Analyst, Principal Banc

1 CERTIFICATE OF SERVICE
2

3 I, Enid Futterman , do swear and affirm that I have served a signed copy of this
4 Petition for No Answer Default, and Order for No Answer Default to any and all
5 defendants by way of U.S.P.S. Certified mail # 7007 1490 0004 9333 and return
receipt.

6 2433

7 

8
9 Enid Futterman
10 661 State Road 23
11 Craryville NY 12521
12
13
14

15 The Person above, who proved to me on the basis of satisfactory evidence to be the
16 person whose name is subscribed to this document and acknowledged to me that
17 he/she executed the same in his authorized capacity and that by his signature on this
18 instrument who is the person who executed this instrument.

19 I certify under PENALTY OF PERJURY under the laws of this State that the foregoing
20 paragraph is true and correct.

21

22 Witness my hand and official seal.

23 

24
25 NOTARY PUBLIC IN AND FOR
26 THE STATE OF NEW YORK

Notary Seal
PATRICK GUTTER
Notary Public, State of New York
Qualified in Columbia County
No. 04CU6117635
My Commission Expires Nov 1, 20 12

1 Enid Futterman
2 661 State Road 23
3 Craryville NY 12521
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

Enid Futterman

Case # 10-CV-1001

Plaintiff,

vs.

Principal Bank

Defendant

ORDER ON NO

ANSWER DEFAULT

Date:

7

ORDER ON ENTRY OF DEFAULT

9 After considering plaintiff's request for entry of default against defendant, proof of service,
10 the affidavits, and other evidence on file, the clerk

11 _____ DENIES the request.

12 _____ FINDS that the record supports entry of default and ORDERS the clerk to enter
13 default.

14 SIGNED on _____, 2010__.

15
16

CLERK, U.S. DISTRICT COURT

17 APPROVED & ENTRY REQUESTED:

18 _____

19 {Name of attorney submitting order}

20
21